Supreme Court of Pennsylvania.

BLACKSTONE *v.* BUTTERMORE.

In order to make an agreemeut for irrevocability, contained in a power to transact business for the benefit of the principal, binding on him, there must be a consideration for it independent of the compensation to be rendered for the service to be performed.

Where, in a power with a clause of irrevocability, the agreement was to give the agent a certain sum and portion of the proceeds of the sale he was authorized to make, for his compensation, and he expended time, labor, and money thereunder, the power was not thereby rendered irrevocable.

For the time, labor, and money expended, a revocation would leave the principal liable on his implied *assumpsit*.

Hartley & Morris's Appeal (*ante*, p. 106), cited and approved.

ERROR to Common Pleas of *Fayette county*.

Patterson, for plaintiff in error.

Kaine, contrà.

The opinion of the court was delivered by

AGNEW, J.—We have decided the substantial point of this case, at the present term, upon the *Appeal of Hartley & Morris*, from the Orphans' Court of Greene county, opinion by THOMPSON, J. A power of attorney, constituting a mere agency, is always revocable. It is only when coupled with an interest in the thing itself, or the estate which is the subject of the power, it is deemed to be irrevocable; as where it is a security for money advanced, or is to be used as a means of effectuating a purpose necessary to protect the rights of the agent, or others. A mere power, like a will, is in its very nature revocable when it concerns the interests of the principal alone; and in such case even an express declaration of irrevocability will not prevent revocation.

An interest in the proceeds to arise as mere compensation for the service of executing the power, will not make the power irrevocable. Therefore it has been held that a mere employment to transact the business of the principal is not irrevocable without an express covenant founded on sufficient consideration, notwithstanding the compensation of the agent is to result from the business to be performed, and to be measured by its extent: *Coffin* v. *Landis*, 10 Wright 426. In order to make an agreement for irrevocability, contained in a power to transact business for the benefit

of the principal, binding on him, there must be a consideration for it, independent of the compensation to be rendered for the service to be performed. In this case the object of the principal was to make sale solely for his own benefit. The agreement to give his agent a certain sum, and a portion of the proceeds, was merely to sell. But what obligation was there upon him to sell, or what other interest beside his own was to be secured by the sale? Surely his determination to sell for his own ends alone, was revocable. If the reasons for making a sale had ceased to exist, or he should find a sale injurious to his interests, who had a right to say he should not change his mind? The interest of the agent was only in his compensation for selling, and without a sale this is not earned. A revocation could not injure him. If he had expended money, time or labor, or all, upon the business intrusted to him, the power itself was a request to do so; and on a revocation would leave the principal liable to him, on his implied assumpsit. But it would be the height of injustice if the power should be held to be irrevocable, merely to secure the agent for his outlay or his services rendered before a sale.

The following authorities are referred to: *Hunt* v. *Rousmanier*, 8 Wheat. 184; Story on Agency, §§ 463, 464, 465, 468, 476, 477; Paley on Agency 155; 1 Parsons on Contracts 59; *Irwin* v. *Workman*, 3 Watts 357; *Smyth* v. *Craig*, 3 W. & S. 20.

The judgment is therefore affirmed.

Circuit Court of the United States. Eastern District of Pennsylvania.

BRETTAUGH *v.* THE LOCUST MOUNTAIN COAL AND IRON COMPANY.

Where the owner of an unseated tract, lying partly in county S., procures a survey, and returns to the county commissioners for taxation a description of the land as 55 acres lying in S. county, part of a tract containing 349 acres, the residue lying in N. county, with the warrantee's name, and it is so assessed, and the taxes ar paid for two years, and in the following year the assessment is so changed in name and quantity that the owner, seeking to pay the taxes, is unable to ascertain that the tract is taxed, and therefore does not pay the tax, a sale for such taxes does not pass the owner's title.

THIS was an ejectment for one-third of 55 acres in Schuylkill